

U.S. Department of Labor

Administrative Review Board
200 Constitution Avenue, N.W.
Washington, D.C. 20210



In the Matter of:

MICHAEL BROOKS,

ARB CASE NO. 2017-0033

COMPLAINANT,

ALJ CASE NO. 2016-SOX-00037

v.

DATE: MAR 25 2019

AGATE RESOURCES, LLC,

RESPONDENT.

Appearances:

For the Complainant:

Michael Brooks; *pro se*; Coburg, Oregon; and Marianne Dugan, Esq.;
Eugene, Oregon

For the Respondent:

Carolyn D. Walker, Esq.; Reilley D. Keating, Esq.; and Brianne L.
Bridegum, Esq.; *Stoel Rives LLP*; Portland, Oregon

Before: William T. Barto, *Chief Administrative Appeals Judge*; James A.
Haynes and Daniel T. Gresh, *Administrative Appeals Judges*

FINAL DECISION AND ORDER

PER CURIAM. The Complainant, Michael Brooks, filed a retaliation complaint under Section 806 of the Corporate and Criminal Fraud Accountability Act of 2002, Title VIII of the Sarbanes-Oxley Act, 18 U.S.C. § 1514A (2010) (SOX) and its implementing regulations, 29 C.F.R. Part 1980 (2018). Complainant alleged that his former employer, Agate Resources, LLC, violated the SOX whistleblower protection provisions by discharging him on September 27, 2013, because he

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engaged in protected activity and by engaging in post-termination threats against him and his son.

Complainant filed his initial complaint of unlawful retaliation with the United States Department of Labor's Occupational Safety and Health Administration on April 4, 2016. On March 6, 2017, the ALJ granted Respondent's motion for summary decision, holding that Complainant failed to file a timely complaint and that equitable tolling of the untimely complaint did not apply. Complainant filed a petition requesting that the Administrative Review Board (ARB or the Board) review the ALJ's order. We affirm.

JURISDICTION AND STANDARD OF REVIEW

The Secretary of Labor has delegated to the Board his authority to act on appeal from ALJ decisions arising under the SOX and issue final agency decisions in those matters.¹ The ARB reviews an ALJ's grant of summary decision de novo under the same standard the ALJ applies. Summary decision is permitted where "there is no genuine dispute as to any material fact and the movant is entitled to decision as a matter of law." 29 C.F.R. § 18.72(a) (2018). On summary decision, we review the record on the whole in the light most favorable to the non-moving party. *Micallef v. Harrah's Ricon Casino & Resort*, ARB No. 2016-0095, ALJ No. 2015-SOX-00025, slip op. at 3 (ARB July 5, 2018).

CONCLUSION

The ALJ's decision is in accordance with law. For the reasons stated by the ALJ, there is no genuine issue of material fact that Brooks's complaint was untimely and that equitable tolling does not apply. Accordingly, we adopt the ALJ's well-reasoned Order Granting Summary Decision on Reconsideration and attach a copy hereto.

SO ORDERED.

¹ Secretary's Order No. 02-2012 (Delegation of Authority and Assignment of Responsibility to the Administrative Review Board), 77 FR 69378-01 (Nov. 16, 2012).

ADMINISTRATIVE REVIEW BOARD

Certificate of Service

ARB CASE NAME: *Michael Brooks v. Agate Resources, LLC*

ARB CASE NO. : 2017-0033

ALJ CASE NO. : 2016-SOX-00037

DOCUMENT : ORDER

A copy of the above referenced document was sent to the following persons on

MAR 25 2019

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